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ENHANCING THE PERFORMANCE OF CROSS BORDER COOPERATION GOVERNANCE THROUGH LEGAL COMMUNITY INSTRUMENTS: THE CASE OF THE EUROPEAN GROUP OF TERRITORIAL COOPERATION (EGTC)

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Abstract. *Europe has become “Europe of regions” and EU policies and instruments shape new forms of cooperation that determine new ways of territorial scales. The scientific literature in the field of regional studies points out different forms of scaling and rescaling the territory, not only in Europe, but also in North American and Asian continents. The fall of the Iron Curtain and the openness of East European frontiers played an important role in introducing the regionalization on the European agenda. The role of EU policies and programs was very important for increasing the cross border cooperation by developing new legal and financial instruments. In 2006, the EU adopted a new Regulation for a specific community instrument whose objective is to strengthen the social and economic cohesion of the EU: the European Grouping for Territorial Cohesion (EGTC). We will examine, firstly, the recent developments of regional cooperation and then, in this context, the role of the EGTC as an instrument of the European Administrative Space for fostering territorial cooperation within the EU.*

Keywords: *European Administrative Space; regionalization; cross border cooperation; Europeanization*

1. Introduction

New mass reforms on the shape, structure and functioning of territorial cooperation are observed internationally and across the EU. The process of European integration affects the demand for self-government in Eastern and

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Central Europe, but also 'older' Western member-states and changes in the shape, structure and functioning of regional cooperation are permanently observed. On top of devolved institutions, the management of local human, financial and technical resources attracts a great deal of thinking both at country and EU levels: local and regional authorities are in charge of enacting 75% of European law: they are the most effective relays for European policies, but before the creation of the Committee of the Regions and the Lisbon Treaty they were deprived of any role within the EU decision-making processes.

Europe has become "Europe of regions" and EU policies and instruments shape new forms of cooperation that determine new ways of territorial scales. The scientific literature in the field of regional studies points out different forms of scaling and rescaling the territory, not only in Europe, but also in North American and Asian continents. At the same time, the meaning of "border" terminology has evolved from a physical representation to a more virtual one. In this context, the creation of community legal instruments to foster territorial cooperation in order to reduce disparities between Western regions and Eastern ones for achieving the single market plays an important role.

Our paper aims to reveal, in the first part, the recent developments in the field of territorial cooperation in the EU and, then, in the second part, to analyze the role of European Grouping for Territorial Cooperation (EGTC) in strengthening the social cohesion. From the empirical analysis of all the EGTC until now, we observed that they have been established only between cross border regions, so one of the research questions of this paper is why the EGTC is used only for cross border cooperation. Is it any misunderstanding, from the part of regional and local authorities, others then the cross borders ones, regarding the role of the EGTC as a community instrument that helps them achieve the "territorial cooperation" objectives of the EU? Can we consider the EGTC as an instrument of the European Administrative Space and what is the role of Europeanization in this context?

Our research methods are based on the qualitative analyse of the EU regulation on EGTC and other EU policies on territorial cohesion and the scientific literature in the field of regional studies.

2. Europe 2020 – Europe of the Regions?

The role of globalization and internationalization on regional development is highlighted (Macleod, Gordon; Jones, Martin, 2007: 1185) as a way to openness of regions to external factors.

Even if the importance of regions wasn't a new topic at Brussels in '90, the fall of the Iron Curtain and the openness of East European frontiers played

an important role in putting the regionalization on the European agenda. Thus, the common activities that implied people from the two sides of the European borders – West and East – were a way to help the former communist countries to learn the social, political and economic European rules (McNeill, Donald, 2004: 146-153). As regards the new eastern border of the European Union the cooperation between different cities has been increased during the last years with the objective to “harmonize their economic, medical and educational activities and services” (Suli-Zakar, Istvan, 2009: 145).

Ansell describes the creation of “networked polity” that represents “a functional organization of multiple public and private authorities that cuts across and links up different subnational regions and different levels of territory (subnational, national, European)” (Ansell, Christopher K., 2004: 15). In his opinion, we can thus identify the internal separation of authority or the existence of new levels of authority and the re-separation of different “sources of authority” for setting up projects.

The consequence of the EU policies is the reconsideration of different interests whose final result is to “increase claims to politico-administrative decentralization and strengthen local forms of external representation” (Bartolini, Stefano, 2004: 24).

The competition between regions for getting the most possible of available structural funds and the lobby of different regional actors may hamper the objective of the EU as a whole, capable to ensure a better life for all its citizens. Thus, based on this competition between regions, cohesion policies determine new forms of “corporativism and localism” while the role of territorial cooperation policies is “to limit the boundaries tensions” (Vanolo, Alberto, 2010: 1311). This competition should be replaced by “an intensively cooperative Europe” (Doucet, Philippe, 2006: 1484) whose objective remained - from its foundation – “contributing to raising living standards and to promoting peaceful achievements” (Schumann Declaration). According to Bartolini, “eliminating explicit obstacles to trade, harmonizing regulations that would otherwise segment the market, and increasing the mobility of labor, services, and capital may lead to divergence in both economic structure and growth rates of different regions, rather to convergence in factor prices, economic structure and growth rates” (Bartolini, Stefano, 2004: 29). As a result of the context in which we leave, as Horga and Soponi pointed out, the concept of “economic frontier” has to be enriched with multiple meanings (Şoproni; Horga, 2009: 6).

The different scales – regional, urban, and national – imply a variety of networks, a game of different actors and these have consequences on the policy decision making (Macleod, Gordon; Jones, Martin, 2007: 1185). The multi-level governance in the EU “promotes cooperative behavior horizontally through the organization of policy networks in a multi-level structure where power is

shared by multi-level actor constellations”(Casula, Clementina, 2005: 337). Bartolini considers that the EU policies in supporting regional development had a major influence on centralized states by fostering the decentralization processes, but at the same time determined increasing “regional capacities in terms of economic and organizational resources to deal with territorial problems and to manage policies of local economic development”. In this sense, the EU “has played an institutional-building role for subnational regional strengthening” (Bartolini, Stefano, 2004: 32).

Perkmann identified three core factors of regionalization and re-scaling processes: “political mobilization” in the sense of the basis for setting up and maintaining the coalition of different factors, “governance building” referring to the decision making power process that coordinates those networks and “strategic unification” defined as “the construction of a new scale as a unit and object for politico-territorial intervention” (Perkmann, Markus, 2007: 257-258). According to Jessop, there are different forms of rescaling: “*relocalization and reregionalization; multicentric or polynucleated metropolitanization; interlocalization or interregionalization; translocalization or transregionalization; global city networks; mesoregional integration; macrorregional integration; intertriadization; transtriadization and globalization proper*” (Jessop, Bob, 2002: 34). It is argued that new types of regional cooperation passed from a “problem-solving framework” whose objective was to find the best solutions for providing services to a larger approach in order to contribute to “the general economic development” of the regions (Bartolini, Stefano, 2004: 33).

But, specifically for the EU, as Tarrow pointed out, “the shift of regional mobilization and potentially territorial claims to sectorial objects and claims through the brokerage of EU officials and national governments buffers the regional cleavages that might produce territorial exit and renders territorial claim divisible into budget items that can be negotiated over, compromised, and traded off for gains or losses in other areas of policy. What might have developed as a transgressive process fomenting territorial exit develops instead as a process of bargaining, alignment and contained contention” (Tarrow, Sidney, 2004: 61).

3. The role of cross border cooperation for the economic cohesion in the EU

The term “border” has different significance: as an “obstacle”, a “physical fortress” for separating a state territory from others, but also a “network” of a numerous factors - officials, institutions, territorial units, as well as “narrated or symbolic” or “politico-technological” ones, if we consider the role of the passport as a “key technology in regulating the flows of people

between different countries”. At the same time, we should also consider the “biopolitical” role of borders - that means “the border is tied very closely to how populations are regulated” (McNeill, Donald, 2004: 146-150). In the middle of the twentieth century, after the Second World War and in the context of the creation of “welfare” states, the military role of borders was replaced with another one, in which borders are “systemic boundaries between regulatory systems” (Bartolini, Stefano, 2004: 23).

The role of EU policies and programs in increasing the cross border cooperation by developing new legal and financial instruments has been stated in the literature (Bartolini, Stefano, 2004; Casula, Clementina, 2005).

The cross borders regions (CBRs) have been defined as “territorial unit that comprises contiguous sub-national units from two or more nation states” (Perkmann, Markus, 2007: 254). The same author considers that the organization of such units is a “paradigmatic case for concerning re-scaling processes”. The re-scaling process supposes “the institutionalization of governance institutions at a new scalar level” (Perkmann, Markus, 2007: 256). Thus, CBRs “have become specific objects of policy and not just spontaneous, natural economic territories. In this sense, they represent specific forms of innovation in relation to space, place and scale. They involve the production of new types of place or space for producing, servicing, working and consuming. They are linked with new methods of place or space production to create location-specific advantages for producing goods and services and offer new regulatory structures, infrastructures, scales economies, new labor markets” (Jesop, Bob, 2002: 37).

Cross border cooperation development is based on following principles: “partnership, subsidiarity and that of the existence of a concept or a cross-border development strategy” (Țoca; Popoviciu, 2010: 89).

The ways in which CBRs are organized, managed, the roles that they play are very different from one continent to another as shown in the following table:

Table 1: *Regionalism and cross border regions*

| Regional bloc | Regional project | Objectives | Characteristics of CBRs |
|---------------|---|--|---|
| EU | Intergovernmental coordination with relatively strong supranational authority | Creation of a homogeneous transnational economic space | Building of durable transnational public governance institutions |
| NAFTA | Intergovernmental coordination under US-leadership | Economic integration focusing on free trade | Exploitation of factor cost differentials and relative advantages |
| APEC | Loosely organized networks of intergovernmental actors under the rubric of open regionalism | Creation of regional free trade as investment | Building of cross border division of labor and sub-regional complementarities |

Source: Perkmann, Markus, Sum, Higai-Ling, Globalization, regionalization and cross border regions: scales, discourses and governance, 18

The Canadian example is different in terms of “political attitudes and behavior” that make people from different regions have different opinions about the policies adopted at the national level and thus influencing the manner in which the regional authorities act (Henderson, Ailsa, 2010: 439).

Jessop presents 9 ways in which cross border regions have emerged:

- from “*liminal forms of economic and political organization*” that have been organized on both sides of borders, even if it wasn’t allowed by the sovereign authority
- the rebirth of “*suppressed (but potentially still viable) historical economic spaces*”, determined by the events from the ’90s in central and eastern Europe
- from the “*spillover*” effect that creates different forms of development of cities from both sides of a border
- from “*creation of new functional economic spaces*” in order to find solutions to common problems as the environment or the infrastructure
- a top down approach from the national states with the objective of “*rebalancing the national scale*”
- the impulse from bodies to “*undermine the national scale*” as it’s the case of Europe of the Regions
- as a “*reaction to uneven development*” that Europe encouraged in order to reduce disparities between regions for creating the single market
- they can also be a part of “*nation-building projects in multinational territorial states*” this is especially the case of federal system in which regions tries to have more autonomy
- the EU policies, different regulatory systems and grants/programs available for regions determine “*career and institution-building initiatives*”.

Three types of cross border regimes have been identified, as follows:

Table 2: *Types of Cross border Regimes*

| Regime Type | Basis for Cooperation | Geopolitical Situation | Approach |
|----------------------|--|---|--|
| Cross border | Common frontier | Peripheral from national centers | Problem-solving endogenous development |
| Big Geographic Areas | Big areas with some common characteristics | Peripheral from European centers | Endogenous development |
| Non-contiguity | Functional: relative affinity of economic growth/structure | Centers at national and even European level | Endogenous development |

Source: Bartolini, 2004: 33

The development of cross border cooperation between different states and the opportunities that resulted from it, determined also changes in work related legal system as highlighted by Popoviciu by analyzing the legal status as stated in EU legislation of “frontier workers” (Popoviciu, Adrian-Claudiu, 2010: 298-305).

4. The European Grouping for Territorial Cooperation (EGTC) – a new instrument of territorial governance in the EU

Established by the Treaty of Maastricht as a Community pillar, the economic and social cohesion was a priority for the EU leaders and the budget allocated, through the Cohesion Fund, showed the importance of this objective at the EU level. From the “Agenda 2000” to “EU 2020”, the role of the EU regional policy was gradually increased, in order to reduce the gaps in economic and social development of regions from Eastern and Central European countries.

The legal basis for the EGTC is the Regulation (EC) No. 1082/2006 which was published in the Official Journal of the European Communities on 31 July 2006. Subsequently, Member States had to approve national procedures required for its implementation. For example, in Romania it's the Government Ordinance no. 127 from 2007 on the EGTC.

According to the EU Regulation, the objective of the EGTC is to facilitate the promotion of cross-border, transnational and / or interregional cooperation. The EU provision called all this forms of cooperation as “territorial cooperation” whose aim is “strengthening economic and social cohesion”. As one can observe, the intention of the EU legislator was not to restraint the role of the EGTC only to the cross border cooperation, but the evidence shows that until now, all the EGTC have been established between cross border regions.

The EGTC is, according to art. 1 of the EU Regulation, a legal institution, having legal personality and the most extensive legal capacity in each Member State so that it can have employees and movable and immovable goods. Analyzing these provisions, we can notice that the EU wanted to make sure that the EGTC has all the legal possibilities to play an important role in territorial cooperation. The same is for fostering the role of EU regions, as according to art. 3 of EU Regulation, the members of an EGTC can be not only Member States, but also regional authorities, local authorities and bodies governed by public law within the meaning of art.1(9) of the Directive 2004/18/EC.

In order to accomplish its objective to foster the economic and social cohesion, the EGTC may carry out different tasks such as the implementation of territorial cooperation programs of projects cofinanced by the Community through the European Regional Development Fund, the European Social Fund and /or the Cohesion Fund. It may also have other specific tasks that contribute to the territorial cooperation objective, according to art.7 of the Regulation. The same article excludes from the competences of an EGTC the safeguard of the general interest of the state or other public authorities, such as police and regulatory powers, justice and foreign policy.

The EGTC is established on the basis of a Convention signed by all the members (which has to include: the EGTC's name, territory, its objectives and tasks, the members and the applicable law) and of the Statutes, also unanimously agreed by its members (in which it is stated the EGTC's decision making procedures, the working-language, the members' financial contribution, the human resource policy, the liability regime).

5. The EGTC as an instrument of Europeanization within the European Administrative Space

The Europeanization process has an important impact on the national administrative system of every candidate or already Member of the EU. It influenced the manner in which the public policies were conceived and implemented at the national level. The Europeanization process also required a new institutional framework at national, regional, and local level capable to ensure the transposition of the "acquis communautaire". On the other hand, the national administrative structure plays an important role especially in the first period after the country's accession to the EU, as the Europeanization is "significantly dependent on the learning capacity of the pre-existing institutional infrastructure" (Paraskevopoulos, Christos J., 2004: 3).

Concerning the regional policy, Europeanization is considered to be "an independent variable that crucially affects and challenges well-established structures within the domestic systems of governance and plays an important role in the administrative restructuring and devolution processes within the member states and in enhancing the institutional capacity at the subnational (regional and local) levels". Thus, the Europeanization has a double impact on the regional policy: "a direct one, by providing increased resources through redistribution and an indirect one, by shaping intra-regional interactions and thus promoting the local ones.

But the real impediment of a deeper integration of EU policies is considered to be the political will and not the legal aspects that imply the coordination of different EU policies on its territory (Doucet, 2006: 1479).

European Administrative Space had been gradually created as a result of the "dissolution of the traditional boundaries of sovereignty" and the "development of the national administrative spaces towards supranational dimensions" (Matei, Ani; Matei, Lucica, 2010a).

As regarding the principles of the European Administrative Space, by analyzing the EGTC we can notice that its implementation implies and ensures, in the same time, the enforcement of the principles, as they are stated in the literature (Matei, Ani; Matei, Lucica, 2010b), of European Administrative Space:

- The need to ensure “trust and predictability” in the development of the EU public action, at both levels, the level of EU institutions, but also in EU Member States;
- The “openness and transparency” is another important pillar of the system. By the creation of EGTC within the European Administrative Space, the EU territorial cooperation disposes of a legal instrument to ensure that it is developing in an open and transparent manner;
- ‘Accountability’ is another principle of the EAS relying on the responsibility of public managers for their actions toward European citizens;
- The principles of ‘efficiency and effectiveness’ are guaranteed by the role of EGTC to strengthen territorial cohesion through adequate programs and projects.

6. What role for EGTC in Europe 2020?

By October 2011 the Committee of the Region had been notified about the creation of a number of 23 EGTC in Europe. The first one has been established in 2008 as Eurometropole Lille-Kortrijk-Tournai. An EGTC Platform has been created in order to ensure better communication and representation on the EU scene. It comprises the political and technical representatives of all EGTCs aiming at exchanging experiences and good practices, improving communication on EGTC opportunities, and sharing knowledge of good practices on the Territorial Cooperation. In 2007, an Expert Group was established by the Committee of the Regions whose mandate was to monitor the adoption and implementation of internal provisions by the Member States, to identify the potential exploitation of EGTC as a tool for cohesive territorial development.

Despite this organization and representation at the EU level, the role of the EGTC as a catalyst for boosting the EU territorial cohesion is rather mitigate. As we have already stated, until now, EGTC has been used only by the CBRs although the EU Regulation stipulates in its first article, that the EGTC concerns “territorial cooperation” in EU.

Even if the European Commission through the General Directorate for Regional Development - at that time - argued since 2008 that the EGTC can be involved in territorial co-operation programs as a beneficiary or lead beneficiary, this did not happen, with one exception: in the present financial framework 2007-2013. It is true that at the time, the EGTC Regulation was adopted and, subsequently, the national procedures in the Member States for its implementation, the legal provisions for the financial framework were set up. The exception is the EGTC that acts as Managing Authority of an

INTERREG/ETC program that has been established on April 2010 with partners from France, Germany, Belgium and Luxembourg.

In October 2011, the European Commission presented, as part of the financial package for 2014-2020, a proposal for revising the EGTC Regulation. The changes are meant to make this instrument easier to be used by the regional and local authorities to enhance territorial cohesion. One change regards the funding members: if the proposal will be approved, an EGTC could be established between one region of an EU Member State and another from a third country. Another proposal concerns the labor law and the staff regulation making possible that for the staff of EGTC the applicable law is either the one of the country where the EGTC is registered, or the law of the country in which it is carrying out its tasks.

7. Conclusion

The globalization, the internationalization on the one hand, and the need for a deeper European integration for accomplishing the objectives of the EU single market on the other, determine the rescaling of European territories. The increasing role of EU regions, based on the principle of subsidiarity, is the result of the impossibility of the national state to solve all the problems at local level. At this end contributed the existence of supranational bodies as the Committee of the Regions and the regulatory framework of European Commission.

In this context, the role of the EGTC as a community legal instrument adopted in 2006 for fostering the territorial cooperation is to strengthen the economic and social cohesion. The results of the EGTC's contribution to the EU cohesion policy as a new governance instrument are not clearly defined. Until now, all the EGTS have been set up at the borders of different EU Member States, even if the EU Regulation does not limit it to the cross border cooperation. In that sense, maybe more efforts to communicate with the regional and local actors within the European Administrative Space are needed.

The Commission's proposal for amending the EU Regulation on EGTC does not represent a major change and that rises a question mark about the Commission's vision about increasing the role of regional and local authorities. Anyway, a more significant role for EGTC in managing the community programs for territorial cooperation will be possible within the future financial framework for 2014-2020. EGTC can surely contribute to the accomplishment of EU 2020 objectives and thus will lead to the creation of new "borders" on EU territory - not in the sense of physical barriers, but in the sense of multi-level governance instruments.

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